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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,078	11/19/2003	Karl R. Kennedy	LEAR 03781 PUS / 03781	7015
34/0/7 7590 07/24/2008 BROOKS KUSHMAN P.C. / LEAR CORPORATION 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075-1238				
EXAMINER CHOI, JACOB Y				
ART UNIT 2885		PAPER NUMBER		
MAIL DATE 07/24/2008		DELIVERY MODE PAPER		

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/717,078
Filing Date: November 19, 2003
Appellant(s): Karl R. Kennedy et al.

Karl R. Kennedy et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 25, 2008 appealing from the Office action mailed April 11, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

USPN 5,987,793	Ebine	11-1999
US 2002/0080043	Damiani et al.	06-2002
USPN 6,121,959	Fukumoto et al.	09-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

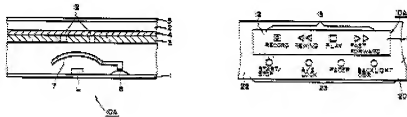
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **1-3, 10-17, and 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebine (USPN 5,987,793) in view of Damiani et al. (US 2002/0080043).

Regarding claims 1, 13 & 17, Ebine discloses an instrument panel (e.g., 20), a control panel (e.g., 22) attachable to the instrument panel, the control panel comprising a plurality of switches (e.g., 13) for use by an occupant in the passenger compartment to control, and an illumination source (e.g., L) for selectively illuminating at least one of the plurality of switches (e.g., column 2, lines 20-60; "... *the display device 10 of the above-described structure, normally an un-shown selector switch is set to the camera shooting function side, so that the display item 12 on the display plane 11 are turned off*

as shown in FIG 4B or 5B to thereby appear as if nothing is existent ... the reason for such disappearance resides in that, if the operation key 13 for the recording/playback function are kept displayed, many keys are always seen to consequently give general users a wrong impression that operating the video camera is very complicated and difficult ... etc.”), wherein each of the plurality of switches is visible to the occupant only when illuminated by the illumination source* (abstract; “the display characters are completely invisible when the illuminating light is turned off, whereby the appearance of the display device is rendered congruous with the metallic or similar color of the surrounding cabinet”; & columns 4-5, lines 65-15) and a control module to be provided in communication with the control panel and the illumination source, the control module for selectively interfacing the control panel with at least one of the plurality of video camera systems to be controlled, and for controlling the illumination source to selectively illuminate at least one of the plurality of icons based on the at least one of the plurality of video camera system to be controlled.



Ebine discloses the claimed invention except for the plurality of switches is used for the vehicle system.

Damiani et al. teaches the plurality of switches is used for the vehicle system (Figures 1 & 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize teachings of Ebine within the vehicle system, where the vehicle instrument panel commonly comprise of DVD player or Navigation containing operation means (Figure 2A) of Ebine. In addition, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Note: * in order to given patentable weight, a functional recitation must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

Regarding claim 2, Ebine in view of Damiani et al. disclose the claimed invention, explained above. In addition, Ebine discloses the illumination source comprises a projector (e.g., lens; 7) for projecting light onto the plurality of switches.

Regarding claim 3, Ebine in view of Damiani et al. disclose the claimed invention, explained above. In addition, Ebine discloses the projector is to be located in the passenger compartment.

Regarding claim 10, Ebine in view of Damiani et al. disclose the claimed invention, explained above. In addition, Ebine discloses the illumination source (e.g., "L") is a plurality of light emitting diodes in proximity to the plurality of switches (e.g., 13).

Regarding claim 11, Ebine in view of Damiani et al. disclose the claimed invention, explained above. In addition, Ebine discloses each of the plurality of switches (8) comprises a touch activated field effect switch.

Regarding claim 12, Ebine in view of Damiani et al. disclose the claimed invention, explained above. In addition, Ebine discloses each of the plurality of switches (8) comprises a membrane switch.

Regarding claim 14, Ebine in view of Damiani et al. disclose the claimed invention, explained above. In addition, Ebine discloses each of the plurality of switches comprises at least one icon for illumination by the illumination source.

Regarding claim 15, Ebine in view of Damiani et al. disclose the claimed invention, explained above. In addition, Ebine discloses the at least one icon comprise a plurality of icons, each of the plurality of icons associated with one of a plurality of systems.

Regarding claim 16, Ebine in view of Damiani et al. disclose the claimed invention, explained above. In addition, Ebine discloses each of the plurality of switches comprises at least one icon for illumination by the illumination source, and wherein the control module selectively illuminates the at least one icon based on the at least one vehicle system to be controlled.

Regarding claim 21, Ebine in view of Damiani et al. disclose the claimed invention, explained above. In addition, Ebine discloses at least two icons are associated with each switch and the control module controls which of the at least two icons is illuminated and the vehicle system controlled as function thereof.

Claims **18 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebine (USPN 5,987,793) in view of Damiani et al. (US 2002/0080043) as applied to claim 15 above, and further in view of Fukumoto et al. (USPN 6,121,959).

Regarding claim 18, Ebine in view of Damiani et al. disclose the claimed invention, except for an audible actuation notification provide with the actuation of the switch.

Fukumoto et al. teaches the plurality of switches includes an audible actuation notification to provide the occupant with an indication of actuation of the switch (column 8, lines 25-35).

It would have been obvious to one of ordinary skill in the art at the time of the invention to associate sound indication of Fukumoto et al. with the actuation switch of Ebine to notify the user both visually and audibly, while the user functions the system.

Regarding claim 20, Ebine in view of Damiani et al. and further in view of Fukumoto et al. discloses the claimed invention, explained above. In addition, Ebine discloses the illumination source is projector for projecting light onto the plurality of switches.

(10) Response to Argument

Applicant's arguments filed March 25, 2008 have been fully considered but they are not persuasive.

Upon further consideration at the time of filing of pre-Appeal Brief Request filed on August 4, 2006 the art rejection(s) with the prior art document Borkowski USPN 6,247,825 over claims 1-20 has been withdrawn. The examiner has carefully identified the boundaries of the protection sought by the applicant(s) and to understand how the claims relate to and define what the applicant(s) has indicated is the invention, however the examiner confidently stands behind his reasons for the prior art rejection(s) and his

supervisor(s) approves the decision regarding the patentability of claims 1-3 and 10-21 over Ebine (USPN 5,987,793), Damiani et al. (US 2002/0080043), and Fukumoto et al. (USPN 6,121,959). See Pre-Appeal Conference decision filed on August 4, 2006. The examiner has provided clear motivation to combine Ebine, Damiani et al. and Fukumoto et al., see final Office Action filed on April 11, 2006, and will be further clarified and explained hereafter.

In response to applicant's argument that Ebine patent is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, examiner admits that the a video camera equipment such as a video tape recorder of Ebine (column 1, lines 30-50 of Ebine; "... numeral 20 denotes a cabinet of an electronic apparatus such as a video camera equipped with a video tape reordered ... has both a camera shooting function as a main function and a recording/playback function as a subsidiary function") is not the same as the vehicle with an instrument panel system. However, it is reasonably pertinent to the problem with which the applicant was concerned, which is for an occupant/user of the control panel to easily operate the complicated control panel by selectively illuminating a plurality of switches (column 2, lines 20-60 of Ebine; "... the display device 10 of the above-described structure, normally an un-shown selector switch is set to the camera shooting function side, so that the display item 12 on the display plane 11 are turned off as shown in FIG

4B or 5B to thereby appear as if nothing is existent ... the reason for such disappearance resides in that, if the operation key 13 for the recording/playback function are kept displayed, many keys are always seen to consequently give general users a wrong impression that operating the video camera is very complicated and difficult"). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the control panel of the vehicle less complicated and less difficult to operate by utilizing the plurality of switches of Ebine, the problem of solving simplified interaction between the driver, passenger, vehicle and the outside world. Thus, it is only logical to include the plurality of switches of Ebine into the control panel of the vehicle of Damiani et al.

In response to applicant's argument that the application has nothing to do with endeavoring to solve user confusion, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). First, the examiner did not

suggest to physically implement the plurality of switches of Ebine into the vehicle control panel, especially LCD (liquid crystal display) touch screen, of Damiani et al. However, the prior art reference of Damiani et al. was combined with Ebine to benefit features of disappearing unnecessary switches to un-complicate interaction between the driver, passenger and the general overall design of control panel for the vehicle. In this case, Ebine clearly suggest that *"... an object of the present invention to provide a display device adapted for use in an electronic apparatus or the like"* in column 3, lines 5-10. One of ordinary skilled in the art would have recognized that the vehicle having an instrument panel may includes various and plurality of switches use by an occupant to control the vehicle system which may be design similar to Ebine, such as DVD navigation system or a common CD/MP3 player as mentioned by Damiani et al. in paragraphs [0002-0004] *"... in the automotive industry, the current trend in the design of driver- or passenger-performable vehicle functions is increasingly towards solutions characterized by a high degree of interaction between the driver, passenger, vehicle and the outside world ... drivers and passengers are allowed an increasing amount of control over vehicle efficiency-e.g., air conditioning and stereo system, ... dialoguing with the navigation system, etc."* Therefore, there is clearly suggestion and motivation to make the proposed modification. The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See

also *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (setting forth test for implicit teachings); *In re Eli Lilly & Co.*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); *In re Nilssen*, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); *Ex parte Clapp*, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985) (examiner has present convincing line of reasoning supporting rejection, see above); and *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning).

In response to applicant's argument that the references fail to show certain features of applicant's invention (i.e., "*a control module in communication with the control panel*", "*multiple icons*", and "*individual switches*"), it is noted that the features upon which applicant relies are clearly disclosed by either Ebine or Damiani et al. Note that claims in a pending application were given their broadest yet reasonable interpretation (e.g., "*a control module*"). *In re Pearson*, 181 USPQ 641 (CCPA 1974). Ebine teaches a control module (column 2, lines 1-30; "*... a printed-circuit board ... to press a switch button 8 disposed above the printed-circuit board 1 in its vicinity, thereby activating each function of the video camera*") for selectively interfacing the control panel with many video camera output functions (column 1, lines 20-45; "*... video camera has both a camera shooting function as a main function and a recording/play function as a subsidiary function*"), such as a video shooting function – record button shown in Figure 2A and playback function – rewind, play, and fast forward buttons shown in Figure 2A. Things clearly shown in reference patent drawing qualify as prior art

features, even though unexplained by the specification. *In re Mraz*, 173 USPQ 25 (CCPA 1972). In addition, multiple icons are clearly disclosed by the reference designated by reference characters 10, 10A, and 10B, where individual switches are considered to be record, rewind, play... etc. Furthermore, Damiani et al. also teaches the control module (16; Figure 2) for selectively interfacing the control panel with different vehicle operations functions. Damiani et al. further teaches multiple icons (e.g., 32, 34, 36 ... etc.) shown in Figures 3-7, 9, and 11, where individual switches are main, communicate, vehicle, travel ... etc. Thus, claims are properly rejected under 35 USC § 103. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(11) Related Proceeding(s) Appendix

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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